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DISCUSSION

Palestine: Do the Recognitions of its Statehood by European National Parliaments matter?

ROBIN CABALLERO — 2 March, 2015



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On 17th December 2014, the European Parliament passed a resolution in favour of the recognition of Palestinian statehood. Since the beginning of Autumn 2014, many national Parliaments of the European Union (Spain, United Kingdom, France, Ireland, Portugal, Luxembourg) have passed resolutions inviting their executives to officially recognize Palestine as an independent State. The symbolic

value of theses resolutions has often been emphasized. They constitute a further step in the progressive change of many European Union member States' policy. In this post, I will pay particular attention to the potential role of the national Parliaments in the implementation of international law. The short period of time in which so many EU member States have adopted these resolutions is relevant for the political and legal discussion on the status of the Palestine.

Although the texts of the resolutions are sometimes quite different, they present similarities and have both a political and legal meaning, which deserves an analysis. They constitute a further step to the full legal recognition of the Palestinian Statehood by the States' executives.

Resolutions with political goals based on international law

The resolutions were passed by wide margins: in the English House of Commons, the resolution was adopted by 274 votes in favour and only 12 against; in France by 339 to 151 votes; in Portugal by 203 to 9 votes; and in Spain even by 319 to 2 votes. In Ireland, both chambers of the Parliament unanimously adopted the motion. In addition, the European deputies passed the text by 498 votes in favour, 88 against and 11 abstentions. The resolutions were thus all adopted by a broad consensus, from the progressive to the conservative political parties.

The resolutions emphasize the importance of a negotiated solution between both parties, and the EU Parliament "stresses that the only possible solution to the conflict is the coexistence of two States, Palestine and Israel". References are made to Israel's right to security during the debates preceding the adoption of these resolutions or in their

wording. Many of the resolutions refer to the construction of settlements in Palestinian territories as “illegal” under international law. Moreover, some resolutions provide a clear definition of both future States and their borders. The resolutions of the French, the Portuguese, and the Spanish Parliaments require the recognition of Palestine within the 1967 borders. Furthermore, the Irish, the French, the EU Parliament and the latest Luxembourg resolutions all refer to Jerusalem as the capital of both states, the Irish referring to “East Jerusalem” as the capital of Palestine. These positions reflect UNSC resolutions 242 and 338, which are often explicitly mentioned in the Parliaments’ resolutions. It seems that their objective is to call for a solution to the Israeli-Palestinian conflict based on international law.

Given that the decision to recognize a territorial entity as a State falls within the exclusive domain of the government, and given that most of these texts are even officially entitled “resolutions”. As such they are not internationally legally binding and the respective Governments are not bound by them. Consequently, they do not lead *per se* to the recognition of a Palestinian State. The goal of the resolutions is to increase political pressure on both sides to find a solution. The only EU member state whose executive has recently recognized Palestine as an independent State is Sweden. Cyprus, the Czech Republic (although the latter was the sole European State to vote against its recognition by the UN), Slovakia, Malta, Hungary, Poland, Bulgaria and Romania had already recognized Palestine before their adherences to the EU.

Influence of the United Nations General Assembly

Slightly more than two years ago, the United Nations General Assembly had recognized Palestine as a State and upgraded to the status of official non-member observer state. This vote has had a direct influence on the Parliaments' resolutions. In fact, the resolution of the United Nations General Assembly explicitly calls upon all UN member States to support the two-States solution within the borders of 1967. Moreover, the resolutions passed by the French Senate, the Portuguese Assembly and the European Parliament, for example, expressly refer to this vote and to the present status of Palestine in the United Nations.

However, this influence should be put into perspective. Indeed, these new resolutions are consistent with the voting behavior in the United Nations General Assembly: with the exception of the United Kingdom, which decided to abstain, most of the executive powers of the recognizing parliaments voted in favour of recognition in the General Assembly, although officially still not recognizing Palestine as a State until today. The abstention by the United Kingdom during the 2012 vote also means that the British resolution is not in contradiction with the position of the executive, as was emphasized in the House of Commons in September 2014. Thus, the resolutions can be considered to be an invitation to the executives either to clarify their positions, like in the case of the United Kingdom, or to assume the policy adopted and their vote within the framework of the United Nations, in the cases of Portugal, Spain, Ireland, France and Luxembourg. The legislative powers therefore acted in accordance with the position adopted by their governments two years ago.

Thus, the resolutions of the European Union member states reflect the growing role of United Nations General Assembly

resolutions in the context of the recognition of States, although the act of recognition remains at the discretion of each State's executive. The executives decided first to vote in favour of the recognition of a Palestinian State in the United Nations General Assembly with a view to recognize it officially at a later stage. The invitation by the national parliaments to recognize Palestinian statehood represents then a further legal step on the way to the full recognition by the executive. In this particular case, the recognition is no more only a discretionary act emitted by the executive, but a long political and legal process in which the United Nations and the national parliaments are associated.

Will for a Coordinated European Foreign Policy

The vote at the General Assembly also reflected the inconsistency of the foreign policies of the European Union member States. Although some countries, like Spain, France, Ireland, Luxembourg and Portugal, voted in favour of recognition, Germany and the United Kingdom decided to abstain, and the Czech Republic even voted against it. However, the votes were not coordinated at the European level. The resolution by the European Parliament occurred on the 17 December 2014, after the resolutions of the Spanish, French, English, Portuguese and Irish parliaments. Nonetheless, the need for a coordinated European policy has been affirmed in almost all the resolutions, or in the parliamentary discussions preceding its adoption in the case of United Kingdom, as the Portuguese, Spanish and French resolutions indicate. These references to the European Union clearly reflect the will to develop a coordinated foreign policy in favour of the recognition of Palestine as a state after years of uncoordinated recognition policies, symbolized by the case of Kosovo. The resolutions passed

ultimately reflect the coordination between the European and national parliaments, and constitute a further step for European integration.

Conclusion

The resolutions adopted by the national parliaments are not binding for the State's executive. They do not have the legal effect of an act of recognition of a State in international law, as this recognition remains at the discretion of the executive power. Nevertheless, they reflect the important role played by the United Nations and the national Parliaments in the long process leading to the legal recognition. These resolutions shall thus be considered as a part of this future legal act. They also reveal the gradual coordination of foreign policies at the European level, after years of discordance.

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ANTONIA G. BACHMANN

2 March, 2015 at 10:41 (Edit) — Reply

So do you think Palestine is a State or is not a State?
Whether or not it is a State – why do the votes of the
national parliaments matter at all if, as you appear to say,
their legal relevance equals zero?



ROBIN CABALLERO

2 March, 2015 at 12:23 (Edit) — Reply

Dear Antonia, since there is no definite stage as to
when a state officially emerges in international
law, there is no objective answer to your question.
Indeed, Palestine is a State for the states that
recognised Palestine as such, but since recognition
in international law is no opposable erga omnes,
there is no obligation for the non-recognising
States to consider Palestine as a state. Thus
Palestine can simultaneously be considered a State

or not, depending on the State with which Palestine is acting. However, 2/3 of the states did officially recognise Palestine as a State and Palestine has been upgraded to a «non-observer State» of the United Nations. Moreover, Palestine is a member of interstate international organisations like the UNESCO. Even non-recognising member States of the same organisation must apply interstate rules according to the statute of the organisation. So regarding the practice, I would say that the prevailing view is to consider Palestine as a State, which is underlined by the resolutions on recognition of the national parliaments.

Only executive powers can recognise an entity as a State. So, in a restrictive sense, the resolutions of national parliaments have indeed no legal relevance. However, state recognition is a discretionary act and thus a political one. The purpose of the article is to show that the act of recognition follows a long process in which the UN and the national parliaments are becoming more and more involved. Thus in the long term the resolutions have a decisive influence on the recognition, are implementing international law and on account of this cannot be dismissed as “legally irrelevant”.



ANTONIA G. BACHMANN

2 March, 2015 at 12:42 (Edit) – Reply

Robin, I understand the first part of your answer, but I don't understand the second part. So you are saying recognition is discretionary and a political act and that States exist not in an absolute sense (e.g.

Germany/Kosovo/Palestine/Israel are not States per se, but only with respect to those who recognize it). But then you say that the resolutions of the national parliaments “implement international law”. That seems to suggest that international law would favour the recognition of Palestine, which would suggest that recognition is not entirely discretionary – or at least that international law would support rather one view than another. If that was the case, then recognition would not be entirely relational/relative – rather it would be possible to say that e.g. Kosovo/Palestine have a more well-founded expectation to be recognised than the Basque Country for example. Would you agree?



ROBIN CABALLERO

2 March, 2015 at 14:49 (Edit) – Reply

The aim of this article is to analyse how significant the recognition resolutions emitted by national Parliaments are. Hence, I merely observed that most of these resolutions refer to UN Security Council resolutions and thus are implementing international law.

Indeed, the UN developed an obligation of non-recognition in case(s) of violation of a norm of jus cogens. Today,

Northern Cyprus is a still an example of the obligation of non-recognition: the UN Security Council resolutions 541 and 550 call “States not to recognize the purported State of the ‘Turkish Republic of Northern Cyprus (...)’”. This duty of non-recognition is thus a limit of the discretionary power, even if this limit is not absolute (Turkey is the only State which does recognise Northern Cyprus as an independent State).

However, in most cases the decision remains subject to political reasons.

Many states assess that Palestine has a right to become a State, and – in my opinion – they do have other valid legal arguments not mentioned by the European national parliaments.

However, I believe there is no “right to State” in international law but a right to self-determination, which entails inter alia the possibility to become a State. I agree that the Palestinian people are entitled to the right to self-determination, as the ICJ in its Advisory opinion “Legal Consequences of the Construction of a Wall in the Occupied Palestinian

Territory“ confirmed it. Since the Palestinian National Council, representing the will of the Palestinian people, proclaimed on November 15th 1988 the independence of the State of Palestine, we may conclude that the Palestinians exercised their right to self-determination by creating a State. In this way, we may conclude that international law supports the creation of a Palestinian State. However, there is no right to be recognised and thus no obligation to recognise Palestine as a State.

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9 March, 2015 at 13:05 (Edit) – Reply

[...] A response to Robin Cabellero [...]

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